

foreign priority dates of EP 1,045,217A1 in the present application respectively, it is not believed that the EP '217 document is prior art. Undersigned counsel further states that at the present time he has no knowledge as to whether the underlying disclosure would be prior art

The Examiner's concern about the translation of DE 1,924,728 disclosing the existence of DE 29504867 is misplaced. First of all, the '867 publication was readily identifiable from the German language copy of the DE '728 which was given to the Examiner at the outset. The Examiner's statement that Applicants "obviously should have" provided a copy of the '867 reference is not appreciated. The Examiner has cited no authority for the proposition that the Applicants are under an obligation to provide a copy of a document identified in still another document of which a copy and a translation were provided and it is not believed that one exists. As the Examiner, given his years of experience should recognize, there are literally millions of patent documents existing in the world today. And even though an applicant or his representative may, at one time, have seen a particular patent document, the content of such a patent document is readily forgotten and thus, not correlated with some subsequent disclosure. This is a common occurrence in the field of patent law that can happen without even the presence of simple neglect, let alone malevolent intent as the Examiner seems to be inferring.

In the present case, undersigned counsel on the record states that he does not have any current recollection of ever casting eyes upon the '867 patent

document although it is possible that he did view it briefly at some unknown time in the past. It is not known whether the inventors may have ever seen it.

In any event, there is no basis for the Examiner's conclusion, either in the law or in the facts of this case and the Examiner is requested to withdraw his statement, on the record, to avoid casting any cloud on the validity on any patent maturing from the present application.

The point sought to be made by the Examiner in the paragraphs expanding pages 2 and 3 of the Office Action is not apparent to counsel. Since counsel was earlier unaware of DE '867, what he said was with respect to the "largeness" of the heat exchangers in a paper filed prior to his awareness is basically immaterial. Similarly, the fact that the DE '867 patent and has a common assignee with U.S. Patent 5,188,193 means nothing because that assignee is not linked to Modine or its predecessors.

Specifically, both the U.S. Patent '193 and the German '867 patent are assigned on their faces to Liebherr-werk Bischofshofen which certainly is not one of Modine's predecessors. Consequently any intent of the Liebherr-werk outfit to sell in the United States is irrelevant to Modine's motives and, in any event, mere intent is not the same as an actual offer to sell or a sale.

Perhaps the Examiner is mistaking Liebherr-werk with Modine Europe's actual predecessor, Langerer & Reich. In any event, the Examiner's statements are erroneous factually and have no bearing on the case. They should be withdrawn on the record.

Undersigned counsel appreciates the Examiner's pointing out that part of 35 USC §119 regarding effective filing dates, which were inadvertently overlooked by counsel in preparing the preceding response.

The concern expressed by the Examiner on page 4 of the Office Action respecting WO 98/45600 and corresponding U.S. Patent 6,164,909 is misplaced. These patents are irrelevant to the claimed subject matter herein contrary to the assertion of the Examiner that they disclose what is currently being claimed. Specifically, while the two referenced documents specify that the heat exchanger length dimensions are not all the same, and this is readily apparent from Fig. 2, for example, it is apparent that the length referred to is the header to header dimension of the structure therein disclosed where in the present case, Applicants are claiming differing core widths, i.e., the side-to-side dimension, not core lengths.

Accordingly, the statement on which the alleged concern is based is erroneous and again, the Applicants request a formal withdrawal of the expression of concern on the record to avoid casting a cloud over the validity of any patent issuing on this application.

Reconsideration of the rejection of claims 1, 4, 6, and 7 as unpatentable over the combined teachings of Ehlers and the two German patents is requested. It is also noted that it is believed that the rejection is not applicable to new claim 10 for the reasons that follow.

Applicants' invention, contrary to the Examiner's interpretation, does not deal with cores of different lengths. While it may utilize cores of different lengths, that is not part of Applicants' invention nor is it claimed.

Rather, Applicants' invention deals with cores of differing core widths. Note that claim one specifies that the three heat exchangers have opposed ends with opposed sides extending between the ends. The opposed sides are spaced from one another by a core width. It also calls for spaced headers to be at each end. Thus, the core width, which is defined as being defined by opposed sides that extend between the ends is the dimension transverse to the distance between the spaced headers. This language and orientation is clear from the language of claim 1 and new claim 10 is considered to specify the same at an even clearer fashion by noting that the headers are spaced from one another by a core length.

Ehlers on the other hand, in col. 3 beginning at line 13, makes it clear that the length dimension of the heat exchanger that he is talking about is a length dimension that extends perpendicularly to the axis 29 which necessarily must be the dimension between the headers of the coolers because core width is a dimension which is

parallel to the axis 29. Moreover, Fig. 2 illustrates rather clearly that the coolers 25 and 26 have a shorter length dimension than the cooler 23 which, in turn, has a shorter length dimension than that of the coolers 24. (The comparison of relative lengths of the coolers 23, 25 and 26 contained in col. 3, lines 18-22 is inaccurate, given the fact that it conflicts with the showing of Figs. 2. Further, given the fact that the length dimension is stated to be transverse to the axis, it is clear that Ehlers is discussing the header to header dimension as being the length dimension. Furthermore, it is conventional in the art to refer to the header to header dimension as being the length, the side-to-side dimension as being the width, and the face-to-face dimension as being the depth of the core.)

The secondary references, German '728 and '867 are apparently conceded by the Examiner as not showing cores of differing widths. This seems to be implicit in the Examiner's reference only to an offset between different length heat exchangers, not different width heat exchangers.

In fact, German '728 does not refer to the heat exchangers having a different length and since only Fig. 1 of the German '728 shows the heat exchangers and their relation to one another, that information must be gleamed from that figure. However, it is not at all clear that that is the case. Fig. 1 is a perspective view from which it can not be readily determined whether or not such an offset exists and it just as surely can not be determined from Fig. 1 whether the lengths of the heat

exchanger are different as well. But even if they were, there is no teaching in the '728 that the core widths of one of the heat exchangers is greater than that of the other such that it projects forwardly and/or rearwardly of a corresponding one or both of the opposed side of the other heat exchanger. Clearly than the combination of Ehlers and German '728 does not teach the invention.

With regard to German '867, it appears from Fig. 1 that the core length of all three heat exchangers are identical and likewise appears that the core width of the heat exchangers 9 and 13 as shown in Fig. 2 is the same. (Note that the claim calls for the relationship of differing widths to be in the core, and not to include some different or additional structure such as the hose fittings.)

Thus, the combination of Ehlers and German '867 likewise fail to teach cores of differing core widths with one of the cores having a greater width so as to extend forwardly and/or rearwardly of another heat exchanger in the assemblage. That being the case, even if the references are combined, Applicants invention as defined in claim 1, and in claim 10 as well, is not found in the art.

Claims 4, 6, and 7 all depend from claim 1 and are believed to be patentable for the same reasons. Furthermore, it is observed that the requirement of claim 6 that opposed sides of the heat exchanger having the greater core width be imperforate to define part of the front panel is not clearly apparent in the rather sketchy drawings of either of the German patents. The same is true of Ehlers who is not concerned with Applicants' invention, but rather, the unique guide and sealing

structure for an air guide ring that is rotatable with the fan. Fig. 6 is believed to be patentable for this reason as well.

Respecting claim 7, the same calls for one or both of the front and rear panels to include a bend extending respectively to one or both of the opposed sides of the one heat exchanger, which is the heat exchanger having the greater core width. We fail to see any such bend in any of the references cited and accordingly believe claim 7 to be patentable for this reason.

The further rejection of these claims are based on the same prior art further in view of German '967 or Fachbach fails to cure the deficiencies of the other references relied upon for the reason above and accordingly should be withdrawn.

The rejection of claims 2, 3, and 8 on the same art with further reference to Beasley is likewise believed to be inappropriate and improper. Beasley, for whatever it teaches, does not teach the specific difference in core widths specified in these claims or the claims on which they depend and accordingly, claims 2, 3 and 8 are believed to be patentable for the same reasons set forth previously with respect to claims 1 and 10.

The various rejections on double patenting are strongly traversed. The '857 patent is not directed to a construction having cores of differing core widths. Rather, and as is clearly apparent from independent claim 1, the only independent claim in the case, is directed to a specific mounting panel for supporting a fan which is stated

with a fair degree of specificity. For example, claim 1 sets forth a mounting panel with considerable detail including the nature of the mounting panel, the use of an adaptor plate, the provision of a number of corner connector regions and support struts. Nothing of the sort is claimed in this case. It is quite apparent that there would be no extension of the monopoly, as is required to support a double patenting rejection, because it is clear that Applicants' invention as presently claimed can be made without infringing any of the claims of the '857, simply by utilizing a different type of mounting panel from that claimed therein. Similarly, the claims of the present patent application, if, in a granted patent would not be infringed by manufacture of the specific mounting panel, adaptor plate etc. construction of the '857 patent. In short, it is quite clear that both the present invention and that of the '857 patent, while both relating to compact cooling systems, relate to entirely different facets of such systems to the point that double patenting would not exist.

And as far as an obvious style of double patenting is concerned, it is clear from the foregoing discussion that neither the '728 nor '867 German patents show or otherwise render obvious Applicants' claimed construction as it relates to the core of one heat exchanger having a greater core width than other heat exchangers.

The same is clearly true as far as the '909 patent where double patenting is concerned. Independent claim 1 of the '909 patent, for example, is directed to a fan or nozzle of a particular construction as is in independent claim 6. Quite clearly, any

extension of a monopoly with claims 1-12 can be avoided simply by using a different type of fan or nozzle than what is specified in these claims.

As to claims 13-19, claim 13 is the only independent claim in this group and the same is restricted to a construction wherein a plurality of heat exchangers are arranged around the outer circumference of the impeller with at least two of the heat exchangers being unequal in length to each other, the length dimensions being measured perpendicularly to the axis so as to define a side of a nominal polygonal shape.

There would be no extension of the monopoly sufficient to support a double patenting rejection since claim 13-19 of the '909 patent would not be infringed by a structure having heat exchangers of differing core widths if all of the heat exchangers have the same core length. Similarly, the claims herein, if contained in a patent would not be infringed by a structure made according to the invention '909 patent simply by using heat exchangers that all had the same core width and which did not extend forwardly and/or rearwardly of the core of another heat exchanger.

And again, the differences between the claims at issue here and claims 13-19 of the '909 patent is not an obvious difference in view of the German '728 or '867 references. This is true for the reasons stated previous in the discussion of claims 1 and 10.

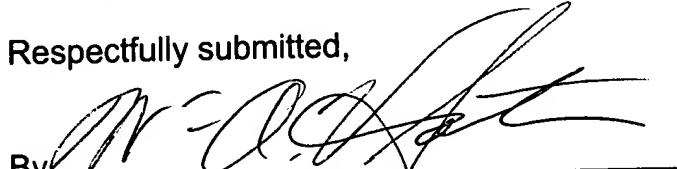
Therefore follows that the double patenting rejection based on the '909 patent is in clear error and should be withdrawn.

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The outright allowance of claim 9, and the indication that claim 5 contains allowable subject matter is noted with appreciation. Rewriting of claim 5 is being deferred because it is believed that the claim on which it depends is patentable for the reasons give above.

In summary, the Applicants request formal withdrawn of certain statements identified previously on the record herein; withdrawal of the prior art rejections, and withdrawal of the double patenting rejections. The passing of the case is solicited and is believed to be clearly in order.

Respectfully submitted,

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